05/12/07

(16)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (C) No.692 of 2007

Appellants

1. Kanhaiya Lal Gajpal
   S/o Shri Bisahu Ram Gajpal,
   Aged about 45 years.

2. Praveen Kumar Gajpal
   S/o Kanhaiya Lal Gajpal,
   Aged about 20 years.

3. Ku. Vandana Gajpal
   D/o Kanhaiya Lal Gajpal,
   Aged about 18 years.

4. Gopesh Kumar Gajpal
   S/o Kanhaiya Lal Gajpal,
   Aged about 12 years minor through legal guardian father Kanhaiya Lal (Appellant No.1)

   All are resident of LIG-1/262, M.P. Housing Board, Kumhari, Post-Kumhari, Tahsil Dhamdha, District Durg (C.G.)

Versus

Respondents

1. Kanti lal S/o Radheshyam Sahu
   R/o Shanti Nagar, Kumhari, Aged about not Known, Post-Kumhari, Tahsil Dhamdha, District Durg (C.G.)
   (Driver of Vehicle Mahindra Champion C.G.No.04-T/139)

2. Goverdhan Sahu, S/o Vishwanath Sahu, Aged about 42 years, R/o In front of Shriram Tower, Tatibandh Basti, Raipur, Tahsil & District Raipur (C.G.)
   (Owner of the Vehicle Mahindra Champion C.G.No.04-T/139)

3. National Insurance Company Limited, Bhilai, Thakkar Chambers, G.E.Road, In front of Project Automobiles, Power House, Bhilai, Tahsil & District Durg (C.G.)

Memorandum of appeal under Section 173 of the Motor Vehicles Act.

Present : Shri H.P. Agrawal, counsel for the appellants.
Shri S.P. Sahu, counsel for respondent No.1.
No one appears on behalf of respondent No.2, though served.
Shri Dasrath Gupta, counsel for the respondent No.3/insurance Company.

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(17)

ORAL ORDER
(Passed on 04th December, 2007)

At the request of learned counsel for the parties, this appeal is being disposed of finally at the stage of admission.

(2) Brief facts are that on 21-10-2005 Smt. Taramani Gajpal was travelling in a Mahindra Champion Vehicle bearing Registration Number C.G.04/C/1359 from Raipur to Bhilai. On the bridge of Kharun River, one unknown truck collided with the said Mahindra Champion Vehicle causing death of Smt. Taramani Gajpal. The unknown truck could not be identified. The appellants/claimants who are the legal representatives of the Smt. Taramani Gajpal had filed an application under Section 166 of the Motor Vehicles Act (Claim Case No.36 of 2006). The application under Section 140 of the Motor Vehicles Act was also filed. The Motor Accidents Claims Tribunal instead of deciding the application filed under Section 140 of the Motor Vehicles Act rejected the application on the ground that it would be appropriate to decide the Claim Case No.36 of 2006 on merit. The approach of the Motor Accidents Claims Tribunal is wholly erroneous and contrary to law. The Motor Accidents Claims Tribunal ought to have considered whether in a case of the present nature, the non-applicants were liable to pay interim compensation under Section 140 of the Motor Vehicles Act or not.

(3) In this view of the matter, the miscellaneous appeal is allowed and the impugned order passed by the 7th Additional Motor Accidents Claims Tribunal, (F.T.C.), Durg in Claim Case No.36 of 2006 is set aside. The Motor Accidents Claims Tribunal is directed to decide the application under Section 140 of the Motor Vehicles Act on merit within 30 days from the date of receipt of a copy of this order.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Tumane